

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Petitioner,

v.,

BONAFACI CAVEHAZ-TORRES

Case No. C05-5425FDB

ORDER DENYING APPLICATION
FOR CERTIFICATE OF
APPEALABILITY

Before the court is the application for a certificate of appealability of Petitioner William G. Moore. For the following reasons, Petitioner's application will be denied.

Pursuant to 28 U.S.C. § 2253(c), a certificate of appealability may issue only if the applicant has made a "substantial showing of the denial of a constitutional right." Pursuant to 28 U.S.C. § 2255, a petition must be filed within one year of the date when the constitutional right asserted was initially recognized by the Supreme Court and made retroactive to cases on collateral review. And, where the petition is a second or successive petition, it must first be certified by the Court of Appeals as containing a new right or newly discovered evidence which, if proven, would establish by clear and convincing evidence that no reasonable fact finder would have found the defendant guilty.

Petitioner did not seek permission of the Court of Appeals to file his successive 2255 petition. The new constitutional right he relies upon was recognized more than a year before he filed his petition, was not made retroactive to cases on collateral review, and is not applicable to the facts asserted. Additionally, the evidence against Petitioner at trial was sufficiently overwhelming that no reasonable fact finder would have found him not guilty.


ACCORDINGLY,

ORDER - 1

1 IT IS ORDERED:

2 (1) Petitioner's application for a certificate of appealability as to Petitioner's Notice of
3 Appeal (Dkt.#19) is **DENIED**.

4 DATED this 17th day of March, 2006.

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6 FRANKLIN D. BURGESS
7 UNITED STATES DISTRICT JUDGE
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